BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2009-479-WS

JUNE 24, 2010

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| IN RE: Application of United Utility Companies, Inc., for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service | **RETURN TO PETITION FOR REHEARING OR RECONSIDERATION AND, ALTERNATIVELY, REQUEST FOR APPROVAL OF BOND** |

The South Carolina Office of Regulatory Staff ("ORS") respectfully submits this Return to the Petition for Rehearing or Reconsideration And, Alternatively, Request For Approval of Bond[1] of Order No. 2010-375, dated June 14, 2010, and filed by United Utility Companies, Inc., ("UUCI" or the "Company") in the above-referenced docket.

ORS respectfully submits that it is within the Public Service Commission of South Carolina's ("Commission") discretion to decide whether to grant the Company's request for a rehearing but that the Company is not entitled to a rehearing as a matter of law. ORS reiterates its stance on the Company's water operations and water service revenues and incorporates by reference its proposed order filed with the Commission on April 23, 2010.

In its Petition, UUCI asserts that the Commission erred in certain respects. First, UUCI asserts that Order No. 2010-375 improperly limits the scope of the due process protections to which UUCI is constitutionally entitled. UUCI contends that it was not provided an opportunity to present evidence on the number of occupied but unbilled premises

[1] ORS notes that Petition Exhibit 1 references the "sum of two hundred ninety seven thousand four hundred fourteen and No/100s Dollars" but then references a different amount in parentheses, " ($311,426.00)." ORS does not oppose approval of a bond, but the Company needs to clarify the amount of the bond for which it seeks approval.

in its systems statewide, nor was UUCI "on notice" that this matter would be at issue, or that it would be required to provide this information on a statewide basis in order for the Commission to rule on its application. (Petition at p. 2-3, paragraph 4) UUCI argues that it was not afforded an opportunity to address any issues related to unbilled and served premises in all of the other subdivisions it serves and had no notice because no party of record raised it as an issue.

Second, UUCI asserts that the approach adopted by Order No. 2010-373 disregards the fundamental principles of utility rate making in that the Company is entitled to an opportunity to earn a fair and reasonable return, and just and reasonable rates may be determined even where a utility has not collected all of the revenue to which it might otherwise be entitled. UUCI argues that the Commission has the ability to impute revenue and that the issue of unbilled sewer revenue is relevant only to the amount of *additional* sewer service revenue necessary for UUCI to earn a reasonable return on its investment.

UUCI also asserts that the Order constitutes clear error in that it: (i) is unsupported by substantial evidence of record; (ii) fails to discharge the Commission's duty to set just and reasonable rates providing for a fair return on UUCI's investment and an opportunity to recover its expenses incurred in providing service; (iii) fails to follow previous precedent; and (iv) denies the Company a fair and impartial hearing in violation of S.C. Const. art. I, § 22.

Regarding the Company's first assertion that it was denied due process, UUCI's argument fails for the following reasons:

(i) **The Company had notice, and the Company provided evidence of unbilled sewer revenue.** The issue of unbilled sewer revenue was first raised at the Piedmont night hearing held on February 25, 2010, almost four weeks prior to the hearing before the

Commission on March 23, 2010. (Tr. 2 at 168-169) The issue was raised again on March 23rd with the testimony of Mr. Metts and Mr. Davis. (Tr. 5 at 326; 341) UUCI rebutted Mr. Metts and Mr. Davis' testimony that there were unbilled sewer revenues in specific neighborhoods with the testimony of Company witness Mr. Lubertozzi who explained that the Company had performed a vacancy survey of the neighborhoods referenced in the Piedmont night hearing and by Mr. Metts and Mr. Davis. Mr. Lubertozzi testified to the results of a vacancy survey of three subdivisions: Stonecreek, River Forest, and Canterbury. For Stonecreek, out of 231 premises, 44 residents were receiving service but not billed. For River Forest, out of 82 premises, 4 were receiving service but not billed. For Canterbury, out of 151 premises, 3 were receiving service but not billed. As a result of that survey, the Company found 51 customers out of a total 464 billable customers were receiving sewer service without being billed, approximately 11%. (Tr. 6 at 760-762) Under cross-examination and questions from the Commissioners, Mr. Lubertozzi stated that the Company was conducting a vacancy survey for other subdivisions starting with UUCI but these surveys were not complete. When asked as to how unbilled sewer revenue might impact the rate case, Mr. Lubertozzi explained that the Company has customers in this down economy that are just leaving without notice but that the Company would continue to send a bill for some period of time. Maybe a new customer would move in to the premises, but the new customer would not receive a bill in the new customer's name. (Tr. 6 at 773-774; 788)

This exchange in the record does not appear to be limited to just the discussion of the three subdivisions surveyed. (Tr. 6 at 786-788) The Company inserted evidence into the record that calls into question whether more than one subdivision is affected. If there was no cause for concern, then there would not be any need for a vacancy survey in the other

subdivisions. This issue cannot be limited to just these three subdivisions which is made evident by the decision to expand the survey to the entire system. The Company's survey is evidence that some customers are receiving service without being billed, and the Company had plans to complete vacancy surveys for other subdivisions, but those surveys had not been completed at the time of the hearing. Mr. Lubertozzi states that for some period of time, a bill should be generated to those addresses and should be included in the billing determinants, but when asked if those premises were included, he could not confirm. (Tr. 6 at 788) ORS, despite its audit and review of the Company's books and records, submitted a proposed order that did not provide a recommended revenue increase for sewer service due to the evidence that the Company introduced into the record.

The Company requests the Commission schedule a hearing to present evidence of the results of the completed vacancy survey. Again, ORS does not object to a rehearing, but neither does ORS concede that the Commission is required to provide the Company a rehearing.

(ii) **The Company failed to preserve its due process objection.** The Company did place a continuing objection at the beginning of the Piedmont night hearing and later filed with the Commission on April 8, 2010 a letter objecting to certain testimony provided at the Piedmont night hearing. The Company did not object to the testimony of Mrs. Nesbitt who raised the issue of unbilled sewer revenue. (Tr. 2 at 167-169) The Company did not object to the testimony of Mr. Metts or Mr. Davis regarding unbilled sewer revenue. The only objection in the hearing transcript related to Mr. Metts' testimony was made when Mr. Metts sought to retake the stand to correct the year in which he found persons who were receiving unpaid sewer service. (Tr. 5 at 353) The failure to make an objection at the time evidence is

offered constitutes a waiver of the right to object. McCreight v. MacDougall, 248 S.C. 222, 149 S.E.2d 621 (1966), cited in Cogdill v. Watson, 289 S.C. 531, 537 347 S.E.2d 126, 129 (Ct. App. 1986).

In response to the testimony of Mr. Metts and Mr. Davis, the Company offered rebuttal testimony which not only substantiated the testimony of Mr. Metts and Mr. Davis that there were occupied but unbilled premises in those neighborhoods, but also raised the issue as to other areas of the Company. While the Company is not objecting to the admission of Mr. Metts and Mr. Davis' testimony, the Company is now objecting to the Commission relying on information supplied at hearing by its own witnesses. Once the Company offered Mr. Lubertozzi as a rebuttal witness on the issue of unbilled revenue, the Company opened the door to the issue of the impact to the rest of the system. The Company asserts that no party of record raised the issue of unbilled sewer revenue for the system; however, after the public witnesses raised the issue of unbilled sewer revenue in their subdivisions without objection from the Company, the Company's rebuttal testimony substantiated the public witness testimony.

UUCI also contends that the approach adopted by Order No. 2010-373 disregards the fundamental principles of utility rate making in that the Company is entitled to an opportunity to earn a fair and reasonable return, and just and reasonable rates may be determined even where a utility has not collected all of the revenue to which it might otherwise be entitled.

Under the guidelines established in the decisions of Bluefield Water Works and Improving Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1923), and Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944), this Commission does not ensure through regulation that a utility will produce net revenues. As the United

States Supreme Court noted in Hope Natural Gas, the utility "has no constitutional rights to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures." However, the Commission should establish rates which will produce revenues "sufficient to assure confidence in the financial soundness of the utility and . . . that are adequate under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." Bluefield, 262 U.S. at 692-693.

Neither S.C. Code Ann. §58-5-290 (1976) nor any other statute prescribes a particular method to be utilized by the Commission to determine the lawfulness of the rates of a public utility. For ratemaking purposes, the Commission examines the relationships between expenses, revenues and investment in a historic test period because such examination provides a constant and reliable factor upon which calculations can be made to formulate the basis for determining just and reasonable rates. This method was recognized and approved by the Supreme Court for ratemaking purposes involving telephone companies in So. Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n of S.C., 270 S.C. 590, 244 S.E.2d 278 (1978).

In order to establish just and reasonable rates the Commission must be able to properly determine the revenue requirements of the Company. Based upon the evidence in the record, the Commission could not determine the amount of additional sewer service revenue as it was unknown whether the billing determinants included those occupied but unbilled premises. As a result, the Commission could not determine the proper amount of the revenue increase and set a just and reasonable rate for sewer service. UUCI argues that the Commission could have imputed the amount of $86,952, but not knowing the depth of the problem of unbilled sewer revenue, the Commission would have been forced to speculate as to the amount to impute as

the 11% is based on a vacancy survey of three of the twelve subdivisions. The Company provides sewer and collection services to a total of twelve subdivisions. (Application Exhibit C Page 2 of 2) Additionally, while the Commission did impute under-collected sewer revenue in the Alpine Utilities, Inc. rate case in Docket No. 2008-190-S, Order No. 2008-759, the imputed revenue was easily calculated because it only involved two specific customers. Alpine had executed contracts with two customers that established a rate lower than the Commission approved tariffed rate. Here, the Commission had no way of knowing how much to impute.

In rate cases, "[t]he Public Service Commission is recognized as the 'expert' designated by the legislature to make policy determinations regarding utility rates." Patton v. South Carolina Public Service Commission, 280 S.C. 288, 291, 312 S.E.2d 257, 259 (1984). In its capacity as ratemaker, the Commission sits as the trier of the facts, akin to a jury of experts. Findings of the Commission are presumptively correct. Courts have refused to establish rates of return or overturn Commission findings absent a convincing showing that the Commission's decision was without evidentiary support or was arbitrary or capricious as a matter of law.

> This Court has neither the expertise nor the authority to fix the rate of return to which a public utility is entitled. Even if we might have found a different rate of return to be fair and reasonable, such does not allow us to substitute our judgment for that of the Commission. Our scope of review of findings of the Commission is accordingly limited. We may not set aside an order of the Commission except on a convincing showing that it is without evidentiary support or that it is arbitrary or capricious as a matter of law. Southern Bell Telephone and Telegraph Company v. Public Service Commission, 270 S.C. 590 at 597, 244 S.E.2d 278 at 282 (1978).

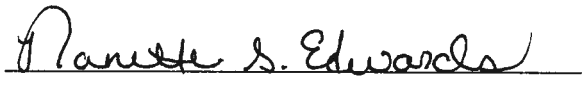
In this instance, the Commission found that it could not determine just and reasonable rates for sewer service due to the issues of unbilled sewer revenue.

The Company further asserts that the Commission departed from prior precedent because it did not establish another hearing to afford the Company the opportunity to conduct an investigation and present information to the Commission or request a late-filed exhibit from the Company. However, the Commission does not have the obligation, nor would it be proper for it, to solicit information to address the weaknesses in the Company's case. The Company has the burden of proving its case. Leventis v. South Carolina Department of Health and Environmental Control, 340 S.C. 118, 530 S.E. 2d 643 (2000), the general rule in administrative proceedings is that an applicant for relief, benefits, or a privilege has the burden of proof.

Regarding unbilled sewer revenue, the Commission properly relied upon the evidence in the record which was introduced by the Company, and the Commission reasonably determined that it could not properly calculate the increase in the revenue requirement for sewer service. (Order at pp. 11- 17) Contrary to the Company's assertions, the Commission did not rely upon the testimony of only two water customers and three sewer customers. The Order extensively references testimony of the Company witnesses on the issue of unbilled sewer revenue. (Order at pp. 11-17) The Company did not object to the testimony of Mr. Metts and Mr. Davis but instead substantiated their testimony through the rebuttal of Company witness Lubertozzi who also acknowledged that the Company was conducting a system wide survey. ORS respectfully submits that the Commission could reasonably reach the conclusion that an increase in the rate for sewer service could not be calculated given the testimony in the record.

WHEREFORE, ORS respectfully submits that it is within the Commission's discretion to grant the Company's request for rehearing. ORS does not oppose this request, but for the reasons set forth above, the Company is not entitled to a rehearing as a matter of law.

Respectfully submitted,



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